MONTANA LEGISLATIVE HISTORY

Chapter 581 19~~8~~89

Bill H _____ S 270 Original bill & history ✓ C

H. Committee on Labor & Employment Relations			S. Committee on Public Health, Welfare & Safety		
Hearing Date(s) 4/04 + EXEC. ACTION	✓	C	Hearing Date(s) 2/06	✓	C
		C	EXEC. ACTION 3/17		C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

SB 270 INTRODUCED BY WILLIAMS, B., ET AL.
ASBESTOS CERTIFICATION AND PERMIT PROGRAM
BY REQUEST OF DEPARTMENT OF HEALTH & ENVIRONMENTAL SCIENCES

1/27	INTRODUCED		
1/27	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
1/28	FISCAL NOTE REQUESTED		
2/02	FISCAL NOTE RECEIVED		
2/03	FISCAL NOTE PRINTED		
2/06	HEARING		
3/21	COMMITTEE REPORT--BILL PASSED		
3/22	REREFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
3/23	COMMITTEE REPORT--BILL PASSED AS AMENDED		
3/27	2ND READING PASSED	48	1
3/29	3RD READING PASSED	45	3
	TRANSMITTED TO HOUSE		
3/29	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
4/04	HEARING		
4/05	COMMITTEE REPORT--BILL CONCURRED		
4/08	2ND READING CONCURRED	87	6
4/10	3RD READING CONCURRED	98	0
	RETURNED TO SENATE		
4/13	SIGNED BY PRESIDENT		
4/17	SIGNED BY SPEAKER		
4/17	TRANSMITTED TO GOVERNOR		
4/20	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 581		
	EFFECTIVE DATE: 07/01/89 (S3, 4, 8, 12)		
	EFFECTIVE DATE: 01/01/90 (S1, 2, 5-7, 9)		
	EFFECTIVE DATE: 10/01/89 (S10, 11)		

SB 271 INTRODUCED BY MANNING, ET AL.
REVISE REQUIREMENTS FOR SPECIAL TAX LEVY FOR FIREFIGHTERS' PENSION FUND

1/27	INTRODUCED		
1/27	REFERRED TO LOCAL GOVERNMENT		
1/28	FISCAL NOTE REQUESTED		
2/03	FISCAL NOTE RECEIVED		
2/04	FISCAL NOTE PRINTED		
2/07	HEARING		
2/10	COMMITTEE REPORT--BILL PASSED		
2/14	2ND READING PASSED	47	0
2/16	3RD READING PASSED	48	0
	TRANSMITTED TO HOUSE		
2/21	REFERRED TO LOCAL GOVERNMENT		
3/07	HEARING		
3/08	COMMITTEE REPORT--BILL CONCURRED		
3/11	2ND READING CONCURRED	83	7
3/13	3RD READING CONCURRED	97	2
	RETURNED TO SENATE		
3/16	SIGNED BY PRESIDENT		
3/17	SIGNED BY SPEAKER		
3/17	TRANSMITTED TO GOVERNOR		

SENATE BILL NO. 270

INTRODUCED BY WILLIAMS, HARPER

BY REQUEST OF THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

IN THE SENATE

JANUARY 27, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON PUBLIC HEALTH, WELFARE & SAFETY.
	FIRST READING.
MARCH 21, 1989	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
MARCH 22, 1989	PRINTING REPORT.
	ON MOTION, TAKEN FROM SECOND READING AND REREFERRED TO COMMITTEE.
MARCH 23, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
MARCH 27, 1989	PRINTING REPORT.
	SECOND READING, DO PASS.
MARCH 28, 1989	ENGROSSING REPORT.
MARCH 29, 1989	THIRD READING, PASSED. AYES, 45; NOES, 3.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 29, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
APRIL 5, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
APRIL 6, 1989	PASSED CONSIDERATION FOR THE DAY.

APRIL 8, 1989	SECOND READING, CONCURRED IN.
APRIL 10, 1989	THIRD READING, CONCURRED IN. AYES, 98; NOES, 0.
	RETURNED TO SENATE.

IN THE SENATE

APRIL 11, 1989	RECEIVED FROM HOUSE.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

Senate BILL NO. 270

INTRODUCED BY William Yellowtail

BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING STANDARDS FOR TRAINING AND ACCREDITATION FOR ASBESTOS WORKERS; ALLOWING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO REQUIRE PERMITS FOR ASBESTOS PROJECTS AND CHARGE FEES OF PERSONS WORKING WITH ASBESTOS; ALLOWING THE DEPARTMENT TO ESTABLISH CRITERIA FOR ASBESTOS PROJECTS; PROVIDING FOR CRIMINAL AND CIVIL PENALTIES; AND PROVIDING EFFECTIVE DATES."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 3] authorizes the department of health and environmental sciences to adopt rules. It is the intent of the legislature that the rules establish standards and procedures consistent with federal law for accreditation of asbestos-related occupations and control of the work performed by persons in any asbestos-related occupation, including the setting of allowable levels of indoor airborne asbestos. It is the intent of the legislature that the rules for asbestos in indoor air include standards for the use of

air monitoring for:

(1) evaluation of asbestos-containing materials in buildings; and

(2) completion and reoccupancy after an asbestos project.

WHEREAS, people exposed to airborne asbestos fibers suffer significantly increased rates of lung cancer, mesothelioma, and other diseases; and

WHEREAS, to prevent unnecessary public exposure to asbestos fibers it is necessary to regulate and establish criteria for asbestos abatement practices and to require statewide standards for training and accreditation of asbestos workers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** **Short title.** [This act] may be cited as the "Asbestos Control Act".

NEW SECTION. **Section 2.** **Definitions.** As used in [this act], unless the context requires otherwise, the following definitions apply:

(1) "Accreditation" means a certificate issued by the department that permits a person to work in an asbestos-related occupation.

(2) "Asbestos" means asbestiform varieties of

INTRODUCED BILL
SB270

chrysotile, amosite, crocidolite, anthophyllite, tremolite, or actinolite.

(3) "Asbestos-related occupation" means an inspector, management planner, project designer, contractor, supervisor, or worker for an asbestos project.

(4) "Asbestos project" means the encapsulation, enclosure, removal, repair, renovation, placement in new construction, demolition of asbestos in a building or other structure, or the transportation or disposal of asbestos-containing waste. The term does not include a project that involves less than 3 square feet in surface area or 3 linear feet of pipe.

(5) "Department" means the department of health and environmental sciences as provided in 2-15-2101.

(6) "Person" means an individual, partnership, corporation, sole proprietorship, firm, enterprise, franchise, association, state or municipal agency, political subdivision of the state, or any other entity.

NEW SECTION. **Section 3.** **Rulemaking authority.** The department shall adopt rules establishing standards and procedures for accreditation of asbestos-related occupations and control of the work performed by persons in asbestos-related occupations. The rules must be consistent with federal law and include but are not limited to:

(1) standards for training course review and approval;

(2) standards for accreditation of applicants for asbestos-related occupations;

(3) examination requirements for accreditation of applicants for asbestos-related occupations;

(4) requirements for renewal of accreditation, including periodic refresher courses;

(5) revocation of accreditation;

(6) inspection requirements for asbestos projects and asbestos-related occupations credentials;

(7) criteria to determine whether and what type of control measures are necessary for an asbestos project and whether a project is completed in a manner sufficient to protect public health, including criteria setting allowable limits on indoor airborne asbestos. A determination of whether asbestos abatement of a structure is necessary may not be based solely upon the results of airborne asbestos testing.

(8) requirements for issuance of asbestos project permits and conditions that permitholders must meet;

(9) standards for seeking injunctions, criminal and civil penalties, or emergency actions;

(10) advance notification procedures and issuance of permits for asbestos projects; and

(11) (a) fees for:

(i) review and approval of training courses;

(ii) application for and renewal of accreditation by a person seeking to pursue an asbestos-related occupation;

(iii) issuance of asbestos project permits; and

(iv) requested inspections of asbestos projects.

(b) Fees must be commensurate with costs.

NEW SECTION. **Section 4.** **Accreditation requirements -- restrictions.** (1) To qualify for accreditation in a particular asbestos-related occupation, a person must:

(a) (i) successfully complete an asbestos-related training course for that occupation approved by the department or the United States environmental protection agency; and

(ii) pass an examination approved by the department; or

(b) satisfactorily demonstrate equivalent previous training or experience in the occupation as prescribed by department rule.

(2) After January 1, 1990, a person may not:

(a) engage in an asbestos-related occupation unless accredited in that occupation by the department;

(b) conduct an asbestos project without a permit from the department or violate the conditions of a permit;

(c) contract with or employ in an asbestos-related occupation a person not accredited in that occupation by the department; or

(d) offer a training course for an asbestos-related

occupation to meet the accreditation requirements of this section unless the department approves the course.

(3) A person who applies for accreditation shall submit the fees and follow procedures prescribed by department rule.

NEW SECTION. **Section 5.** **Fee disposition.** The department shall deposit fees collected under [this act] into the resource indemnity trust fund created in 15-38-201.

NEW SECTION. **Section 6.** **Records.** A person engaged in an asbestos project shall maintain the records required by department rule concerning the nature of project activities.

NEW SECTION. **Section 7.** **Criminal penalties -- disposition of civil penalties.** (1) The department may suspend, deny, or revoke the accreditation of or reprimand a person who:

(a) fraudulently or deceptively obtains or attempts to obtain accreditation;

(b) fails to meet the qualifications for accreditation or comply with the requirements of [this act] or any rule adopted by the department; or

(c) fails to meet any applicable federal or state standard for asbestos projects.

(2) Notwithstanding the provisions of any other law, a person who purposely or knowingly violates any provision of [this act] or an adopted rule or order issued pursuant to

[this act] is guilty of a misdemeanor.

(3) If the department determines that a violation of [this act] or a rule promulgated pursuant to [this act] has occurred, it may issue an order compelling the person receiving the order to end the violation immediately.

(4) In addition to or instead of the remedies listed in subsections (1) through (3), an accredited person who purposely or knowingly violates [this act] or a rule adopted pursuant to [this act] that concerns the conduct of an asbestos project may be assessed a civil penalty by the district court of not more than $1,000 a day for an initial violation and $5,000 a day for each subsequent violation occurring within a 3-year period from the date of the initial violation.

(5) A district court may assess a civil penalty of not more than $25,000 a day upon a person who engages in an asbestos project without valid accreditation or a permit. In the case of a continuing violation, each day the violation continues constitutes a separate violation.

(6) Civil penalties collected under [this act] must be deposited into the resource indemnity trust fund created in 15-38-201.

NEW SECTION. **Section 8.** Coordination instruction. If ___ Bill No. ___ [LC 857] is not passed and approved, [this act] is not void.

NEW SECTION. **Section 9.** Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 10.** Effective dates. (1) [Section 3 and this section] are effective July 1, 1989.

(2) [Sections 1, 2, and 4 through 7] are effective January 1, 1990.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB270, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This legislation would allow for the accreditation of those persons participating in an asbestos related occupation and for issuance of permits for asbestos projects to protect the public health and safety.

ASSUMPTIONS:

Assume fees will be periodically reviewed and adjusted such that revenue would not exceed the expenditures of the program.

	FY90			FY91		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Revenue:	$ -0-	$65,169	$65,169	$ -0-	$57,340	$57,340
Expenditure:	-0-	65,169	65,169	-0-	57,340	57,340
Net Effect:	-0-	-0-	-0-	-0-	-0-	-0-

FUND IMPACT:

Fees shall be set so as not to exceed the cost of the program. Fees collected shall be placed in the Resource Indemnity Trust Fund offsetting the cost of the program.

EFFECT ON COUNTY OR LOCAL REVENUE OR EXPENDITURE:

Will require the county or local entity to pay for accreditation of personnel should they so elect to accredit their own personnel. If an asbestos project is initiated by the county or local entity, they will pay for an asbestos project permit. Fees will be set so as not to exceed the cost of the program. The amount required for the fees is unknown at this time, since the amount of asbestos activity is unknown. However, the cost is expected to be minimal, since this is a user fee and will be allocated to all users.

LONG RANGE EFFECTS OF PROPOSED LEGISLATION:

Fees are to be reviewed periodically and adjusted such that revenue does not exceed the expenditures of the program. There is no effect anticipated, as the fees collected shall be deposited in the RIT Fund.

TECHNICAL OR MECHANICAL DEFECTS OR CONFLICTS WITH EXISTING LEGISLATION:

This legislation is subject to Section 2-8-202, MCA; which requires the proposal to be submitted to the Legislative Audit Committee at least 180 days prior to the first day of the next regular legislative session and report of the Legislative Audit Committee be attached to a bill containing such proposal prior to being reported out of committee. The deadline for submittal to the Legislative Audit Committee was not met since the Department of Health and Environmental Sciences was not aware that this proposal may be subject to the statute. A separate bill has been introduced to exempt state entities who have a federal mandate to implement a program or a program which may receive delegation of primary enforcement responsibility from the federal government from the provisions of Section 2-8-202, MCA.

Ray Shackleford 2/2/89

RAY SHACKLEFORD, BUDGET DIRECTOR DATE
OFFICE OF BUDGET AND PROGRAM PLANNING

2/3/89

BOB WILLIAMS, PRIMARY SPONSOR DATE

Fiscal Note for SB270, as introduced

SB 270

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By Senator Tom Hager, on February 6, 1989, at 1:00 in Room 410 of the State Capitol.

ROLL CALL

Members Present: Senators Tom Hager, Tom Rasmussen, J. D. Lynch Matt Himsl, Bill Norman, Doc McLane, and Bob Pipinich.

Members Excused: None

Members Absent: None

Staff Present: Tom Gomez, Legislative Council and Elaine Graveley, Secretary

Announcements/Discussion: None

HEARING ON SENATE BILL NO. 270

Presentation and Opening Statement by Sponsor:

Senator Bob Williams, the chief sponsor of SB 270, gave a brief summary of the bill. SB 270 is an act establishing standards for training and accreditation for asbestos workers; allowing the Department of Health and Environmental Sciences to require permits for asbestos; allowing the Department to establish criteria for asbestos projects; providing for criminal and civil penalties; and providing effective dates.

List of Testifying Proponents and What Group they Represent:

Will Garvin, representing Garvin Engineering
Gene Fenderson, Montana State Building Traders
Keith Colbo, Safe Building Alliance
Adrian Howe, Montana DHES
Larry Hoyt, Montana DHES
Steve Browning,
Bruce Mercer
Jim Jensen, MEIC
Tom Hopgood, Montana Assoc. Realtors
Beverly Gibson, Montana Association of Counties

List of Testifying Opponents and What Group They Represent:

Don Chance, Montana Building Association

Testimony:

Larry Lloyd, administrator from the Department of Health and Environmental Sciences stood in support of the bill. He stated the effects of human exposure to asbestos fibers have been known for some time Breathing asbestos fibers is known to cause diseases such as asbestosis (a debilitating fibrotic lung disease), mesothelioma, and lung cancer. Documentation of asbestos-related diseases has been well established among asbestos workers. Mr. Lloyd handed out written testimony to the committee. (See exhibit #2)

Jim Jensen, representing the Montana Environmental Association, stood in support of the bill. Mr. Jensen stated that there is a real need for this program. Asbestos is very dangerous. There is a definite need to have people certified.

Gene Fenderson, representing the Montana State Building and Trade Council, stated that he strongly supports this bill. He stated that the people and workers need to be protected. He expressed concern regarding the rulemaking authority being given to the Department, however, he will work with them regarding this matter.

Will Garvin of Garvin Construction and Engineering stated that there is a definite need for a law of this nature so let's do it. Training is the main part of the entire bill. The training will be available in Montana which is EPA approved.

James Tutwiler, representing the Montana Chamber of Commerce, reiterated the necessity for SB 270. He stated that the Chamber has become aware of the dangers of asbestos. The Chamber is willing to support any bill which help the health of all Montanans.

Senator Bob Pipinich of Senate District 33 stood in support of the bill. He stated that he has been an employee for Stone Container Corporation in Missoula. The entire mill is full of asbestos. He stated that he is 100% is favor of this bill.

Steve Browning of Helena stated that if Montana does not pass this legislation it runs the risk of not being able to qualify for EPA grants. In the event of the workers not being certified, the law of supply and demand will raise the cost of inspections. Public law requires that each state must adopt a contractor accreditation plan at least ass stringent as the model plan developed by the Administration within 180 days after the commencement of the first regular session of the legislature of such state which is convened following the date on which the administrator completes development of the Model Plan. The "administration" is the administrator of the EPA.

Mr. Browning also stated that the Montana School Boards Association which to be recorded as being in favor of the bill.

Keith Colbo representing the Safe Building Alliance stood in support of the bill.

Tom Hopgood representing of the Association of Realtors stood in support of the bill.

Beverly Gibson representing the Association of Counties stood and stated their support of the bill. She stated further that it would be good to have the rulemaking authority at the Department of Health.

OPPONENTS:

Don Chance of the Montana Building Association which is 800 members strong stated their opposition to the bill. This bill will cause major problems for the construction industry, and it would give the Department a blank check. There is no assurance that the approach will be reasonable, and no details are available regarding the program. SB 270 will impact a major portion of the remodeling and plumbing projects in this state. Almost all remodeling projects would come under this bill. EPA requirements will be a bureaucratic nightmare. Liability insurance will become untouchable. Mr. Chance stated that there should be some training but not all of the EPA standards. The department says that there will be five or six inspections per project, however, there are only two building inspectors in the state and the department does not have any idea of the inspection requirements. Training is very important. Instead of the mandate in this bill there should be a two year study under the EQC.

Questions From Committee Members:

Senator Lynch asked Mr. Lloyd how this bill will differ from the EPA standards. Mr. Lloyd stated that the EPA and OSHA are addressing the situation at the present time.

Senator Lynch asked Mr. Lloyd if there are really only two building inspectors in Montana. Mr. Lloyd replied that he was unaware how many inspectors there are in Montana as they are licensed through the Department of Commerce. However, he stated that he was sure that additional staff would be hired.

Senator Rasmussen asked whether or not the industry had any input into the bill. He was told that the industry did in fact, have alot of input into the bill.

Senator Norman asked Mr. Lloyd what the training costs. Mr. Lloyd replied that the cost of tuition is approximately $500 per student for just the classes. If this bill were to pass that costs would be approximately $450 and $500.

Senator Norman asked about the EPA grants. Grant money is only for the schools.

Senator Himsl asked how long the training programs will continue. The training programs will continue as long as there is asbestos. The program will be self-supporting because of the RIT money. Mr. Lloyd stated that the state will not be doing the training, only the certifying.

Closing by Sponsor:

Senator Williams closed by saying that there is a problem and it is time to do something about it. The Bynum school recently received a $20,000 grant to remove asbestos. The schools of Montana must implement a plan by May 9, 1989 to remove the asbestos. The EPA is working to eliminate asbestos from all public buildings. Education and training are very necessary. The number on inspections will be based upon the people doing the work. He asked the committee to look favorably upon the bill.

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By Senator Tom Hager, on March 17, 1989, at 12:45 p.m., Room 410, State Capitol

ROLL CALL

Members Present: Senators Tom Hager, Chairman; Tom Rasmussen, Vice Chairman; J. D. Lynch, Matt Himsl, Bill Norman, Bob Pipinich

Members Excused: Harry H. McLane

Members Absent: None

Staff Present: Tom Gomez, Legislative Council
Dorothy Quinn, Committee Secretary

Announcements/Discussion: None

EXECUTIVE ACTION ON SENATE BILL 270

Chairman Hager called for action on SB 270: This bill established standards for training and accreditation for asbestos workers; allowed the Department of Health and Environmental Sciences to require permits for asbestos projects and charge fees of persons working with asbestos; allowed the Department to establish criteria for asbestos projects; and provided for criminal and civil penalties.

Discussion: Senator Hager explained that the committee would vote on SB 270 and he would hold it until SB 259, which is an exemption from the Sunrise provisions, was signed by the Governor.

Recommendation and Vote: Senator Lynch made a MOTION THAT SENATE BILL 270 DO PASS. Senators in favor, 5; opposed, 0. IT IS RECOMMENDED SENATE BILL 270 DO PASS.

EXECUTIVE ACTION ON HOUSE BILL 688

Chairman Hager called for action on HB 688: Senator Hager advised this bill allowed Registered Nurses employed by family planning clinics to dispense prepackaged

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By Chairman Russell, on April 4, 1989, at 5:15 P.M.

ROLL CALL

Members Present: Thirteen.

Members Excused: One, Duane Compton.

Members Absent: Two, Mark O'Keefe and Jim Rice.

Staff Present: Eddye McClure, Staff Attorney.

Announcements/Discussion: CH. RUSSELL: We will have a hearing on SB 270 and secondly, I have asked Tom Gomez to talk about a resolution.

HEARING ON SB 270

Presentation and Opening Statement by Sponsor:

SEN. WILLIAMS: I am passing out some anticipated questions and answers concerning the subject of this bill. (Attached hereto as Exhibit #1).

This is one of two companion bills. The other bill is SB 259, which is a bill to exempt asbestos workers from our sunrise audit. (Written testimony of Sen. Williams on SB 259 attached hereto as Exhibit #2, at his request).

The reason this bill hasn't come to you any sooner is because the chairman of our health committee did not want it out until 259 was signed into law. SB 259 has been signed into law. It addresses this and the underground tanks, so the groundwork is all in place for SB 270 to go through and satisfy some federal mandates. These are some problems we do have in the state of Montana that I feel could be much worse unless we get a handle on it. I started on it last October and I made the initial contact with the Department of Health. I appreciate all the work that they have put into this bill but it is not necessarily their bill alone. There are a lot of people who are concerned about asbestos, how we are going to handle it.

This bill was not just put together over night and we held several meetings. Labor attended these meetings as we needed input from them because, in my mind, they are the ones who are looking out for the health of the people who

are going to be working with this asbestos removal. We also had several engineering firms who came and spent time with us and people in education, as the schools are going to be heavily involved in it.

Testifying Proponents and Who They Represent:

LARRY LLOYD, Administrator of the Environmental Sciences Division for the State Department of Health and Environmental Sciences.

JIM TUTWILER, Montana Chamber of Commerce.

GENE FENDERSON, Montana State Building Construction Trades Council.

STEPHEN BROWNING, Safe Building Alliance.

Proponent Testimony:

LARRY LLOYD, proponent. The deleterious effects of human exposure to asbestos fibers has been known for many years. Epidemiologists have been studying such effects for over fifty years and we know that the breathing of such fibers causes diseases such as asbestosis, which is a debilitating fibrotic lung disease; mesothelioma, which is a fibrotic condition of the lining of the lung cavities; and also lung cancer.

Submitted written testimony which is attached hereto as Exhibit #3.

JIM TUTWILER, proponent. We rise in support of this bill. We supported this bill on the Senate side and we wish to support it here for the simple reason that we know that across the state in Montana there are not only schools but other structures and buildings which have potential asbestos problems. We know that asbestos poses a real threat in some cases to occupants of buildings; particularly, we know that it poses a threat to employees who work in asbestos removal and disposal. We are aware also that the companies and corporations who are engaged in investing their resources and engaged in working in the asbestos field also run a risk if there are not proper safety guidelines and standards. We believe that SB 270 provides those guidelines. It is a major step towards providing a safe working environment and it also provides very stiff penalties for those who do not comply with those requirements. For these reasons we feel the bill is needed. It is a sound bill and we urge your support.

GENE FENDERSON, proponent. We rise in support of this bill. We have put a lot of work in it and we think it is a good bill.

STEPHEN BROWNING, proponent. Submitted written testimony, attached hereto as Exhibit #4.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

LEE: Question for Mr. Lloyd. In the accreditation standard that you are going to adopt, are they going to be AHERA standards or what are you going to be adhering to?

LLOYD: The rules would be adopted under the Administrative Procedures Act. You will notice in here that there is a committee formed of affected people, industry, asbestos suppliers, contractors, etc. I anticipate in my own mind that the rules which will be adopted will most likely be very close, if not identical, to that within the federal law.

LEE: It is my understanding that there are two different sets of federal laws that deal with asbestos. You have the most stringent law contained in AHERA and then there is a lesser standard contained in NESHAPS. Which of those two will be your guidelines here?

LLOYD: We would be adopting the requirements under the AHERA law. The NESHAPS is designed more for ambient air purposes rather than for indoor exposure.

LEE: On page 6, line 5, the accreditation section. Is this going to be for anyone who is going to work with asbestos? Will it be the worker who is hired onto a job, is he going to have to take this AHERA standard accreditation course, or is this with the employer in mind who will then have a subsidiary function to frame his work force?

LLOYD: The accreditation would include the workers as well as the contractors. The experience has been that many of the workers have not been adequately trained for their own protection, nor for the protection of others who are either co-occupying the structure or who may occupy the structure after the completion of the job.

LEE: How long will this course take?

LLOYD: I will have to ask Gene Fenderson to answer that.

FENDERSON: For the worker the EPA calls for 19 1/2 hours. For the person who is running the job it goes up to 32 hours.

Our labor union runs everybody through a 40-hour course, whether they are a worker, supervisor, or whatever. We demand 40 hours.

THOMAS: Question of Sen. Williams. What are we doing in the bill with disposal of the asbestos?

WILLIAMS: I defer the disposal question to the Department of Health.

THOMAS: Is disposal addressed in the bill and, if not, what are we doing with it?

LLOYD: Disposal is defined as an asbestos project, so anyone disposing of asbestos would be covered by this bill.

THOMAS: What do you mean by that, covered by the bill?

LLOYD: They would be required to dispose of asbestos in accordance with federal and state law. This would mean the packaging, transportation, use of accredited and certified landfills, the covering, the training of the people involved in the transport and disposal.

THOMAS: Currently, do we have any of these landfills in the state?

LLOYD: We do have landfills which are approved for the disposal of asbestos. The procedures are different than for some other wastes.

THOMAS: There is a lot of asbestos that has been removed that has not been properly disposed of. What are we doing in that area, or what can we do? Does this bill help us in that area?

LLOYD: This bill would provide us with the wherewithal to do some inspections and some follow-up. At the current time we have no resources and essentially no program. The only follow-up that is currently being done is the local supervision of the landfills and that has not been adequate.

THOMAS: I just might point out for the committee's interest, if nothing else, that there are places where the asbestos is taken to landfills and just dumped and it blows all over. So there is another element to this problem, and it is in the landfill operation.

SIMPKINS: Question of Mr. Lloyd. Is there any reason that you can see that is necessary to double the training hours for a particular worker above that which is recommended by the federal government?

LLOYD: This is something we need to look at when we adopt the rules. The requirement is 24 hours by the EPA. This 24

hours is all classroom and it is hard to conceive that someone could adequately learn to safely remove and work with asbestos without having some hours on-the-job training. I think this would be in addition to the 24 hours of classroom training.

SIMPKINS: Therefore, the person would be accredited once he completes this training course, regardless of how long, is that correct?

LLOYD: There will be an established minimum course. The courses would be approved under the provisions of this bill, if it is passed.

SIMPKINS: I direct your attention now to page 9(4) regarding the fines. The way I read this is that if a person knowingly violates the rules adopted by your agency, he can be fined up to $1,000 a day for initial violation and $5,000 from there on. Down in (5) if he doesn't know anything about the law, and a small contractor goes in there and works on asbestos, we are going to sock him $25,000 a day even though he didn't know he was violating a law. The way I read this, too, the laborer who is also working under that, since he has valid accreditations to work on this project, can also be fined $25,000 a day for even working on the project. Isn't that the way that reads?

LLOYD: In my recollection, it was a "knowing" violation, which would have that penalty. It would not be for someone who unsuspectedly got into an asbestos project without knowing it.

SIMPKINS: Would you mind looking at that, starting with line 8 and tell me if that is what it says, in your interpretation?

(4) refers strickly to "knowingly" violates, and then (5) just says "if he doesn't."

LLOYD: I defer this to Adrian Howe. He was the prime drafter of this bill and he can explain this question.

ADRIAN HOWE, Chief of the Occupational Health Bureau with the Department of Health and Environmental Sciences.

(4) is for violation of any worker, contractor, or consultant who is doing consulting or working on the job who does not have the proper accreditation.

(5) is for someone who is engaging in an asbestos project, directed toward a contractor who knowingly went into an asbestos project without the permit that is required.

LEE: Adrian, that $25,000, is that in compliance with the federal AHERA standard?

HOWE: To the best of my knowledge on the AHERA standard there is no requirement for the state to set a specific civil penalty or criminal penalty. That was done by our legal staff in the Department of Health and Environmental Sciences, using as a guideline other civil penalties which are assessed under other environmental sciences statutes and rules. For example, I know that one of the water quality civil penalties is $25,000 per day.

LEE: I had a person advise me, who works in asbestos a lot, that under AHERA the maximum penalty is $1,000 a day. I don't know if that is right or not, but that is what I was told. I was wondering, if that is true, why are we exceeding that by so much.

HOWE: I may have to defer that to Mr. Lloyd since he is more versed in the AHERA law than I am.

LLOYD: When this was drafted by our legal staff, it was brought in pretty much into conformance with penalties from other environmental laws. The others are in this range. To my knowledge, I have never known of a maximum penalty that has been assessed. Most of the penalties are almost always substantially less than the maximum and then they are generally negotiated on a settlement.

LEE: Question for Sen. Williams. On the bottom of the fiscal note it says a separate bill has been introduced to exempt state entities who have a federal mandate to implement a program or a program which may receive delegation of primary enforcement responsibility from the federal government from the provisions of Section 2-8-202, MCA. I take it our school systems have a federal mandate to clean up their asbestos problem, is that right?

WILLIAMS: This is mandated by federal law, it is my understanding. We had to enact this type of legislation within 180 days from the beginning of our next legislative session, so we couldn't put it off for another two years. The separate bill was to exempt the asbestos workers from the sunrise audit. I guess I am not quite following you as to what you mean by the schools. How do you mean?

LEE: What I am wondering is if, under this exemption, does that mean that the people going to work on these school projects are exempt from these licensing and accreditation standards?

WILLIAMS: Definitely not. There would be no exemptions for somebody going into a school.

SIMPKINS: The Resource Indemnity Trust Fund, 15-38-201, is that the super fund? What is that fund?

DRISCOLL: The Resource Indemnity Trust is a fund paid by people involved in mining and it is to clean up environmental

hazards. Normally that money is spent on whatever the legislature decides it should be spent on. Rep. Fritz Daily and people in Butte took it to the supreme court alleging that the money was not being spent properly. The supreme court said that the legislature has the power to spend it on anything they want to.

Closing by Sponsor:

WILLIAMS: I appreciate the questions that were asked. I suppose that $25,000 does seem awfully high. I don't feel it would be abused. I feel the committee that will be advising the Department of Health on the rules and regulations will be looking after their own good. We have not heard from the refineries today, but we invited them in because they have a lot of asbestos problems. The amendments were put in here at the request of the refineries to address their problems and we hopefully have the bill pretty well designed around what problems they might have.

Rep. Harper's name is on the bill. He carried 259 and he has agreed to carry this bill if it should pass.

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DISPOSITION OF SB 270

Motion:

WHALEN: Move we DO CONCUR IN SB 270.

Discussion:

SIMPKINS: I would like to move to delete that section on page 9, lines 8 through 12, concerning $25,000 a day penalty. That is an excessive penalty and it seems to me that if you look at the other penalty above that, $1,000 a day, and then $5,000 a day for a subsequent violation, seems should be adequate to take care of the needs because we are talking about "purposely or knowingly violates" this act or a rule adopted pursuant to this act, so it is going to cover anything such as licensing, accreditation, jobs; it covers everything under this bill. It seems that the $25,000 a day just doesn't need to be in this bill.

KILPATRICK: You are reading that differently than I am because the other is a person and I can see that (5) is referring to a company that blatantly comes in and does this job without anything at all and they should get a $25,000 fine. I think that something as important as asbestos is, let's nail them, because they better know what is going on and I think it is a good amendment.

McCORMICK: I agree with Rep. Kilpatrick on that. You are taking the whole bill away if you take that out of there. It says

"if they do it without a permit", well that's the idea of this training, is to get a permit. If you don't want them to take the training, throw the bill out.

SIMPKINS: Tim (Whalen), would you please tell me, is that the way that reads? It doesn't say anything about a company, it says "...upon a person who engages in an asbestos project."

WHALEN: When the word "person" is used in the law, it also means business entities. Corporations, incorporations, partnerships, associations, all those things, are recognized as "person" under the law.

SIMPKINS: Are we assured that just a worker working on a project can't be held under this paragraph?

WHALEN: I would say that your assurance, Dick, is the fact that it has been brought up here in executive action on this bill. It has been stated that the intent of the bill is that it not apply to just the worker, so when you look at the legislative intent of this bill, or the courts looking at the legislative intent of this bill down the road, I think it will be pretty clear from the minutes that this isn't intended to apply just to a worker working on a project.

RUSSELL: Are you ready for the question? Now Rep. Simpkins' motion is to take that whole section 5 out of the bill.

LEE: Dick, I can't see taking this whole section out of there, but I could see a penalty equal to what is in (4) above there, but I can't see striking the whole thing. I think it is entirely possible a person could unknowingly get into a remodeling or demolition project and get into things he didn't know were there. I think the asbestos problem being what it is, contractors are going to have to be aware more and more of what they possibly can get into, but I think $25,000 is excessive. I think nothing there is excessive in the other direction also. I could support something that was agreeable with section 4 there.

DRISCOLL: If you read (5) it says the district court <u>may</u> assess <u>not more than</u> $25,000, so you still have to be found guilty and I am sure you would have to be blatant in your violations for any judge to assess anything close to $25,000 a day. You would have to have a continuous violation. I think the safeguards are the judges. We are just putting a cap on it so the judge can't get really mad at them and fine him $50,000 a day.

SIMPKINS: Rep. Driscoll, the wording is the same as up in paragraph 4. It's the judge. It says $1,000 a day <u>may</u> be assessed as a civil penalty by the district court. It just seems to me, and Rep. Lee's comment is very good too, but the only main difference between paragraph 4 and paragraph 5

is "knowingly." So you are saying it is less of a penalty if a guy knew about it, knew he was violating this act, knew that he was violating state law, and he only gets socked $1,000. If he didn't know he was violating state law and went into this whole deal, he is going to get fined $25,000. It just doesn't make sense to me.

DRISCOLL: Sub 4 says "an accredited person" who knowingly and purposely violates this act. The second one is "they engage in it without accreditation or permit." You still have to go back to the judge. In either case, the department can't do it, the judge of a district court has to do it and I guess it would be my opinion that if the person was accredited and they knowingly and purposely did it they would probably get fined the $5,000 a day, or close to it. If you didn't know about it and it was just a small amount, such as in a small demolition project, the judge would probably just slap your hands. If you went into a major asbestos removal project, you would have at least some knowledge of the business or you wouldn't be allowed on the project. Then if you went in there without valid accreditation or permit and you were blatant, I think that the judge would make that decision. It doesn't read the way I think the law should read, but you do have to put some trust in the judges to make the decisions as they hear the evidence in individual cases.

Amendments, Discussion, and Votes:

RUSSELL: Called for vote on the amendment by Rep. Simpkins to delete this section.

Vote: Fifteen to one against passing the amendment. Rep. Simpkins voted for.

The amendment has FAILED.

Further Discussion on the Motion to Approve the Bill:

LEE: The only other concern I have is that it seems like if you are going to ask everybody who works with asbestos to take the highest possible standard accreditation program under AHERA, it is either (a) going to be really expensive for the employer, or (b) you're going to have employers who don't want to do this. It is my understanding that there is a slightly lesser standard under the other asbestos act that the national congress has under NESHAPS that still requires a physical and eight hours of training, but isn't quite so expensive. If a guy goes through a three-day course, takes his physical exam, walks on the job, puts his respirator on and then in half an hour walks back out and says he is not going to work with that thing on his face, then it is all gone. I understand the problem but I am just trying to see if there might be a little better way to approach this.

GLASER: Right now a good portion of the people doing this work are coming from out of state; a lot of them from Alaska because there was a lot of work up there; from Washington state and all over.

Workers should be properly trained if they are going to have anything to do with it. There should even be a rudimentary training to every carpenter who goes into a finished building and does any remodeling. That is simply to protect themselves and the labor unions and other folks around are doing this. I have seen a lot of asbestos work done and I have been around an awful lot of it. If we don't do this right we are going to be one unhappy bunch of people.

DRISCOLL: There may be some confusion on the training. There is a thing called a "competent person" and that is the person who needs to know how to set up the negative air machine and make sure the enclosures are airtight so that none of those fibers get outside of the enclosure. The other training is for the people who simply take it off and stick it in a bag. There may be some confusion on how many hours of training is needed. To be a competent person you need at least forty hours, in my opinion. Then the training of the asbestos worker who simply knows how to suit up to keep the stuff off him, stick it in the bags and make sure the bags are washed and then stick it in another outside bag before it goes to the dump, that is probably the 19 or 24-hour training.

You can't learn the negative air machine and all that other stuff in 24 hours. I think in their rules they will do as Washington state did and clarify that there is a difference between what is called a "competent person" asbestos removal and just asbestos removal person. A "competent person" has to be on the job and know how to set up all the machinery.

Vote:

Unanimous vote to DO CONCUR IN SB 270.

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COMMITTEE JOINT RESOLUTION

RUSSELL: (addressing Tom Gomez, Staff Attorney) Tom, do you want to present the two drafts that you have drawn up?

Committee members, you will remember that we passed unanimously to have a committee resolution dealing with the National Park Service and asking that the concessionaires in those parks adhere to Montana hour and wage laws.

I have asked Tom to explain the two items.

TOM GOMEZ: For the record I am Tom Gomez, staff researcher with the Montana Legislative Council.

(copies of Resolution drafts LC 1814 and LC 1814X attached hereto as Exhibits #5 and #6)